

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: COTTONBALLS, LLC	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ-43 NO. 2008-SW-32
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TO: Sholom Rubashkin
Cottonballs, LLC
220 N. West Street
Postville, IA 52162

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cottonballs, LLC (Cottonballs) for the purpose of resolving open burning and improper disposal of solid waste violations. The violations occurred at two separate Cottonballs' locations in northeast Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Tom McCarthy, Environmental Specialist
DNR Field Office 1
909 West Main, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Cottonballs owns and operates several chicken confinement operations throughout Clayton and Winneshiek County, Iowa. Two of these sites, Cottonballs 2 and Cottonballs 9, are the subject of this administrative consent order. Cottonballs 2 is located at 1652 127th Ave., Castalia, Iowa (T97N, R06W, Section 35, NW ¼ of SW ¼, Winneshiek County). Cottonballs 9 is located at Gunder Road, Postville, Iowa, 52162 (Section 4, SE 1/4, Marion Township, Clayton County).

2. On March 28, 2007, DNR Field Office 1 received an anonymous complaint about trash blowing off the new chicken confinement site located on Gunder Road in Clayton County (Cottonballs 9).

3. On March 30, 2007, Tom McCarthy of DNR Field Office 1 inspected Cottonballs 2 and Cottonballs 9 sites. During the inspection at Cottonballs 2, Mr. McCarthy noted improper solid waste disposal and open burning of wood and insulation. During the Cottonballs 9 inspection, he observed improper solid waste disposal and open burning of construction waste. Mr. McCarthy also noted a large amount of construction waste from the Cottonballs 9 site on both sides of Gunder road. Mr. McCarthy contacted Mr. Jacobsen, Cottonballs representative, who stated that the trash would be picked up.

4. On April 9, 2007, Mr. McCarthy returned to the Cottonballs 2 site. He again documented improper solid waste disposal and open burning of wood and insulation. He then returned to the Cottonballs 9 site and noted that the construction waste from the surrounding fields had been cleaned up, but that the improper solid waste disposal and burning of construction waste continued at the site.

5. On April 19, 2007, McCarthy again visited the two Cottonballs sites. At the Cottonballs 2 site open burning and improper solid waste disposal continued. At the Cottonballs 9 site, most of the solid waste had been placed in a dumpster.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Open burning of insulation and other construction waste was observed at the

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Cottonballs 2 and Cottonballs 9 sites. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

4. 67 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. Improper disposal of solid waste was observed at both Cottonballs sites. At Cottonballs 9 waste had blown off the site and was found on either side of Gunder road. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Cottonballs agrees to do the following:

1. If not already completed, Cottonballs shall immediately properly dispose of all solid waste from its Cottonballs 2 and Cottonballs 9 sites;
2. If not already completed, Cottonballs shall immediately provide landfill receipts to DNR Field Office 2 to show that the solid waste from Cottonballs 2 and Cottonballs 9 has been disposed of properly;
3. Cottonballs shall immediately stop all improper solid waste disposal and open burning at any of its facilities in the state of Iowa; and
4. Cottonballs shall pay a penalty of \$10,000.00 within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of

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an administrative consent order with an administrative penalty of \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – Cottonballs has saved time and money by improperly burning and disposing of waste from the plant. It saved time by not sorting through the waste to separate recyclables and garbage material and it saved money by avoiding garbage pickup and or recycling fees by burning the assorted garbage. Based on the above considerations, \$3,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$3,000.00 assessed for this factor.

Culpability – Cottonballs has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Tom McCarthy visited the facilities two times after his initial visit in March 2007 and observed continued improper solid waste disposal and open burning. Based on the above considerations, \$3,000.00 is assessed for this factor.

Aggravating/Mitigating Factors – Cottonballs is aware of the DNR regulations regarding air quality and solid waste. Cottonballs was warned by DNR personnel visiting the site, by email and by telephone, to cease the open burning and improper solid waste. Cottonballs chose not to comply with these DNR regulations. Based on the above considerations, \$1,000.00 is being assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Cottonballs. For that reason Cottonballs waives their rights to appeal this administrative consent order or any part thereof.

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VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
Oct, 2008.



COTTONBALLS, LLC.

Dated this 2 day of
OCTOBER, 2008.

Barb Stock (Con 10-16 Winneshiek County and Con 10-16 Clayton County); Kelli Book;
Dan Stipe; DNR Field Office 1; VI.D and VII.C.1